Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 96-84
of Regulatory Fees for	)	
Fiscal Year 1996	)	

REPORT AND ORDER

Adopted: July 1, 1996 ; Released: July 5, 1996

By the Commission: Commissioner Chong concurring and issuing a statement in which Commissioner Quello joins at a later date.

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Final Rules

I. Introduction

1. By this Report and Order, the Commission completes its rulemaking proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, has required it to collect for Fiscal Year (FY) 1996. See 47 U.S.C. § 159 (a).

2. For FY 1996, Congress has required that we collect $126,400,000 in regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1996. Pub. L. No. 104-134 and 47 U.S.C. § 159(a)(2). This is $10 million more than Congress designated for recovery through regulatory fees for FY 1995. See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-227, released June 19, 1995, 60 FR 34004 (June 29, 1995). See FY 1995 Report and Order, 10 FCC Rcd 13531. It is also $10 million more than Congress initially required us to collect in regulatory fees for FY 1996.[1] See Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-153, released April 9, 1996, 61 FR 16432 (April 15, 1996). The current Schedule of Regulatory Fees ("Schedule") is set forth in Sections 1.1152 through 1.1156 of the Commission's rules. 47 C.F.R. §§ 1.1152-1.1156.

3. In addition to adjusting our Section 9 regulatory fees to ensure collection of the $126.4 million that Congress requires us to collect in FY 1996, we are also adjusting the Schedule and associated payment procedures to reflect changes to certain fee amounts recently mandated by Congress in Pub. L. No. 104-134, to reflect changes in the estimated number of payment units associated with services subject to a fee and to incorporate certain public interest considerations. See 47 U.S.C. 159 (b).

4. Finally, we are amending the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not currently subject to payment of a fee, to simplify and streamline the Schedule and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3). Except where noted, in those instances where we received no comments on a proposal set forth in our NPRM, we are adopting the proposal without further discussion.

II. Background

[1] Subsequent to the April 9, 1996 release of our NPRM in this proceeding, the Congress passed and the President signed on April 26, 1996, H.R. 3019 (Pub. L. No. 104-134), 110 STAT. 1321, which changed the total amount of regulatory fees to be collected in FY 1996 from $116.4 million (contained in Pub. L. No. 104-99) to $126.4 million.

5. Section 9(a) of the Communications Act of 1934, as amended, requires us to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that we incur in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). In our FY 1994 Report and Order, 59 FR 30984 (June 16, 1994), 9 FCC Rcd 5333, we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our FY 1995 Report and Order, we modified the Schedule to increase by approximately 93 percent the revenue generated by our regulatory fees due to the increased amount that Congress required us to collect in FY 1995. 60 FR 34004 (June 29, 1995). Also, in the FY 1995 Report and Order, we amended certain rules governing our regulatory fee program based upon our experience administering the program in FY 1994. See 47 C.F.R. §§ 1.1151 et seq.

6. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in Section 9(g) of the Act. For fiscal years after FY 1994, however, Sections 9(b)(2) and (3), respectively, provide that we adjust our fees by making "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. 47 U.S.C. § 159(b)(2), (b)(3). Section 9(b)(2), entitled "Mandatory Adjustments", requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover. 47 U.S.C. § 159(b)(2).

7. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether to adjust the fees to take into account factors that are reasonably related to the benefits provided to the payors of the fees and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." 47 U.S.C. § 159(b)(3). Section 9(i) requires that we develop accounting systems necessary to making permitted amendments. 47 U.S.C. § 159(i). Finally, we are required to notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Overall Methodology

8. As noted above, Congress has required that we recover $126,400,000 for FY 1996 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 § U.S.C. 159(a).

9. In our NPRM, we proposed to develop our fees for FY 1996 by first adjusting our estimates of payment units so that we could determine how much revenue we would collect even if we did not change any individual fee amounts. We then compared the total estimated revenue that we would collect at the existing fee amounts to the total revenues that we are required to

collect in FY 1996 ($126.4 million), and pro-rated the difference among all the existing fee categories.[2] We then intended to compare these projected revenues with cost data accumulated from our new cost accounting system and to make any further adjustments necessary to ensure that costs generally correlated with revenues in each fee category. As discussed in the NPRM, this step was not performed due to implementation problems associated with our new cost accounting system.

10. We next considered various recommendations made by our Bureaus' and Offices' managers concerning adjustments to the fees and to our collection procedures. The results of these actions, the detailed steps we followed in the development of our proposed FY 1996 regulatory fees, and a proposed new Schedule of Regulatory Fees were presented in our NPRM.[3] In addition, we provided detailed descriptions of each fee category, information on the entity responsible for payment of each fee, and other critical information designed to assist potential fee payers in determining the extent of fee liability, if any, for FY 1996. We invited interested parties to comment on our proposed methodology and on our various proposals to revise the Schedule of Regulatory Fees. We are adopting the same general methodology, as set forth in Paragraphs 12-14 below, for developing FY 1996 regulatory fees as we proposed in our NPRM.

11. While we received no comments specifically supporting or opposing the proposed methodology, the law firm of Bernstein and McVeigh contends that regulatees are entitled to a fee payment credit because the Federal government, including the Commission, was closed for business for significant periods due to budget disputes and snowstorms resulting in substantially lower regulatory expenditures than anticipated. However, we have no discretion in the amount that we are required to collect since it is Congress that annually establishes the amount that we are to collect through regulatory fees. See 47 U.S.C. § 159(a). Thus, Bernstein and McVeigh's pleading requires no further discussion.

B. Adjustment of Payment Units

12. In order to calculate individual service fees for FY 1996, we first adjusted the

[2] As noted earlier, Congress increased the amount to be collected in FY 1996 from $116.4 million to $126.4 million subsequent to release of our NPRM in this proceeding.

[3] Permitted amendments are being made pursuant to Section 9(b)(3) to incorporate CMRS Mobile Services, CMRS One-Way Paging, Intelsat & Inmarsat Signatory, and Low Earth Orbit (LEO) Satellite Systems regulatory fee categories and to make related changes to Geosynchronous Space Station fees. These new permitted amendments will require 90 days Notice to Congress prior to implementation. 47 U.S.C. § 159(b)(4)(B). However, it should be noted that for the CMRS Mobile Services, licensees who have not elected to convert their stations from private to commercial status will not be subject to payment of a CMRS Mobile Services regulatory fee for FY 1996. Therefore, for stations licensed as commercial on or before the date of determination of fee liability the fee will become effective 60 days from the date of publication in the Federal Register. See para. 17-22.

estimated payment units for each service because, in many services, payment units have changed substantially since last year. We obtained our estimates through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Herein, we are further adjusting certain payment units to reflect refinements to our unit counts since adoption of our NPRM. Appendix B provides a summary of how payment units were determined for each fee category.

C. Adjustment of Television Station Fees

13. On April 26, 1996, the President signed H.R. 3019 (Pub. L. No. 104-134), "The Balanced Budget Downpayment Act." This legislation, in addition to requiring that we collect $126.4 million in regulatory fees, revised the fees for television broadcast licensees set forth in Section 1.1153 of our rules.[4] As Congress has required, we have incorporated its revised television station fees into our Schedule of Regulatory Fees for FY 1996.

D. Recalculation of Fees - Mandatory Adjustments

14. We next determined the amount of revenue to be collected from television station licensees based on the new fee amounts established by Congress, as discussed in Paragraph 13.

[4] Specifically, Pub. L. No. 104-134 made the following changes to Section 1.1153:

Fee Category (VHF/UHF Television Stations)	FY 1995 Fee	New FY 1996 Fee
VHF Markets 1-10	$22,420	$32,000
VHF Markets 11-25	$19,925	$26,000
VHF Markets 26-50	$14,950	$17,000
VHF Markets 51-100	$9,975	$9,000
Remaining VHF Markets	$6,225	$2,500
UHF Markets 1-10	$17,925	$25,000
UHF Markets 11-25	$15,950	$20,000
UHF Markets 26-50	$11,950	$13,000
UHF Markets 51-100	$7,975	$7,000
Remaining UHF Markets	$4,975	$2,000

See Appendix C. We subtracted our estimated television revenues ($10,060,000) from the total amount that Congress requires us to collect in FY 1996 ($126,400,000). The difference ($116,340,000) is the amount to be recovered from all other regulatees in order to meet Congress' requirement for FY 1996. We then multiplied the revised payment unit estimates for FY 1996 by the corresponding FY 1995 fee amounts in each non-television fee category to determine the revenue we would collect in FY 1996, assuming no other change to the FY 1995 fees. Next, we adjusted the revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, in order to insure that we would collect approximately $116,340,000 from these fee categories. Finally, we recalculated the individual fee amounts in order to collect the adjusted amount in each service, and rounded each fee amount as provided by Section 9(b)(2).[5] Appendix C provides detailed calculations describing how the revised fee amounts were determined.

E. Proposed Permitted Amendments

15. In our NPRM, we proposed certain changes and additions to our current fee categories and to our methodologies for assessing fees in individual service categories. We have given full consideration to the comments by interested parties and, in certain instances, we have decided that further adjustments to the Schedule of Regulatory Fees are warranted based upon the public interest and other criteria established in 47 U.S.C. § 159(b)(3). Each of these changes is discussed below together with any comments we received in response to our NPRM. However, as noted above, we will not discuss further any of our proposals from the NPRM which received no comments. Instead, these proposals are incorporated as proposed in our NPRM or are not adopted in those cases in which we proposed not to change our current rules and procedures. These include: Commercial AM/FM/TV Construction Permits, where we considered and rejected including the revenue requirement in the fees for the broadcast station licensees; Wireless Cable, where we considered and rejected the idea of basing the payment units on subscriber counts instead of on a per license basis; Direct Broadcast Satellite (DBS) Service, where we also considered and rejected a proposal to establish payment units on a subscriber basis rather than per satellite; Interstate Telephone Service Providers, where we proposed to consolidate several service categories into one category; and Earth Stations, where we also proposed to consolidate several service categories into one category.

1. Commercial Mobile Radio Service (CMRS)

16. In the NPRM, we proposed to establish a CMRS Mobile Services fee category and to include in the category cellular providers and CMRS service licensees authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users

[5] Section 9(b)(2) requires that we round fees to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more. 47 U.S.C. § 159(b)(2).

as to be effectively available to a substantial portion of the public. See NPRM at para. 19. We stated that the new CMRS Mobile Services category was intended to replace the Public Mobile/Cellular Radio regulatory fee category and that certain mobile services assigned to the Private Land Mobile Radio Service fee category for FY 1995 would be included in the new CMRS category for FY 1996.[6] Also, we proposed to defer assessing a regulatory fee upon licensees in the Personal Communications Service (PCS) because PCS is in a very early start-up phase. Finally, we proposed that CMRS Mobile Services fee payors calculate their annual regulatory fee based on their total mobile or cellular unit (mobile or cellular call sign or telephone number) count, or on their total per unit (two-way pager) count, as determined on December 31, 1995.

17. The American Mobile Telecommunications Association, Inc. (AMTA) and Nextel Communications, Inc. (Nextel) oppose including Specialized Mobile Radio (SMR) licensees and other mobile communications providers, previously assigned to one of the Private Mobile Radio Services (PMRS) fee categories, in the CMRS Mobile Services fee category for FY 1996. The parties contend that these mobile service providers are not properly subject to the CMRS Mobile Services fee because their operations were not a part of the CMRS service on December 31, 1995, the date for calculating the CMRS Mobile Services fee, and, in fact, will not convert to CMRS status until August 10, 1996. AMTA and Nextel also urge that we exclude from the CMRS Mobile Services category any mobile units that do not have full interconnection capability with the public switched network. In addition, Nextel contends that, given the competitive status of CMRS providers, we should not subject some new mobile service providers to a CMRS Mobile Services fee and defer imposition of the requirement on other new providers, such as PCS. Instead, AMTA and Nextel urge that current mobile service providers pay no fee or remain in the PMRS fee category. Finally, AMTA contends that existing mobile licensees who have paid their regulatory fees in advance should not be subject to a CMRS Mobile Services fee until they file applications for renewal or reinstatement. In the alternative, AMTA and Nextel contend that current licensees that become subject to the CMRS Mobile Services fee before their existing licenses expire are entitled to a credit for the remaining years of their advance fee payments.

18. In the Omnibus Budget Reconciliation Act of 1993, Congress provided that private carrier systems, including 220-222 MHz and SMR services, providing interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively

[6] Specifically, we proposed that the CMRS Mobile Service fee category would include cellular providers (Part 22) and Business Radio Services, 220-222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90); Public Coast Stations (Part 80); Public Mobile Radio, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services (Part 22). Licensees who have not elected to convert from private to commercial operations will be exempt from payment of the annual CMRS Mobile Services fee for FY 1996. Existing commercial licensees and those who elected to convert prior to December 31, 1995, must pay the annual CMRS Mobile Services fee for FY 1996.

available to a substantial portion of the public, were to be reclassified as CMRS licensees.[7] Congress provided a three year transition period pursuant to which private carrier licensees authorized prior to August 10, 1993, would continue to be regulated as private carriers until August 10, 1996. Therefore, we agree with the commenters that we should not require licensees that will not become subject to CMRS regulation until August 10, 1996, to pay a CMRS Mobile Services fee for FY 1996. Further, we agree with the parties that existing CMRS licensees should include in their calculations of the CMRS Mobile fee only those units operational on December 31, 1995. Also, as a result of this decision, we have reduced our estimate of the number of payment units for this category.

19. However, we do not agree that CMRS units that do not fully connect with the public switched network should not be subject to the CMRS fee. Consistent with Section 9(a) and 9(b), our CMRS Mobile Services fee is based upon the costs of our regulatory oversight. As such, we will require mobile providers to submit a CMRS Mobile Services fee based upon our regulatory costs rather than the particular use that a provider makes of its frequencies. Therefore, mobile operators, otherwise subject to the CMRS Mobile Services fee, should submit a CMRS Mobile Services fee for any unit operating under the authority of a license authorizing the operator to provide "for profit" service to the public and to interconnect its services with the public switched network, without limitation, or to such classes of eligible users as to be effectively available to a substantial portion of the public, as described in Section 20.3 of our Rules.[8] 47 C.F.R. § 20.3.

20. In addition, we reject Nextel's argument that, because we have decided that PCS licensees should not be subject to the fee for FY 1996, all new providers of CMRS service should be excepted from payment of the CMRS Mobile Services fee. Unlike other services within the CMRS category of services, PCS has only recently been established and few PCS providers are now operational. In contrast, SMR licensees, such as Nextel, have long been eligible to provide mobile service, including interconnection with the public switched network, and thus, although they may be newly assigned to CMRS, these operators cannot be said to be new providers of mobile services.

21. We recognize that some current mobile service providers have paid Private Land Mobile fees covering the length of their license term. However, we decline to defer assessing a CMRS fee on these licensees until the expiration of their current licenses.[9] In our NPRM, we

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[7] See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392.

[8] For regulatory fee purposes, "distress" traffic is not included as part of a public coast station licensee's subscriber count.

[9] Because Private Land Mobile regulatory fees are submitted with license applications and paid for the number of years in the term of the license, these licensees have paid their regulatory fees several years in advance. See 47 U.S.C. § 159(f)(2).

stated that payors of advance fees would not have these fees "adjusted" during their license term. See NPRM at para. 56. Our clear purpose was to assure payors of advance fees that we would not require any additional payment if we increased the fee amount required for the fee category in which the payment was made. It was not our intent that licensees transferred from one fee category to another would not be subject to the fee payment required by their new fee category until the expiration of their current license. Nevertheless, under our Rules, a licensee is entitled to a refund of an advance payment, upon request, whenever we "adopt new rules that nullify a license or other authorization." 47 C.F.R. 1.1159(2)(i). Therefore, any licensee that converts from private to CMRS and has paid its fees in advance for a period of years, may file a request for refund with its initial CMRS regulatory fee payment. Detailed procedures for refund requests will be issued by Public Notice.

22. Destineer, Inc., a PCS licensee, asks that we establish a CMRS Messaging Service fee category to replace our CMRS One-Way Paging fee category. Destineer recognizes that, as a PCS provider, it is not subject to any fee payment for FY 1996. However, it states that, with the exception of two-way paging services, our CMRS Mobile category includes only broadband services and that broadband services, unlike paging services, provide for real time two-way interactive voice communications. We agree with Destineer that there are important regulatory, technical and competitive differences between the two narrowband and broadband services that may warrant establishing a fee category that would include all narrowband services, including two-way paging. However, Destineer has provided us with no information concerning how to structure its proposed fee category, e.g., estimated units that would be included in the category for FY 1996 or the impact of the new fee category on revenues from our CMRS Mobile fee category. Therefore, we will adopt our proposed CMRS Mobile Services and CMRS One-Way Paging fee categories for FY 1996, but we invite interested parties to file proposals and comments on alternative methods to assess CMRS fees in our proceeding to establish regulatory fees for FY 1997.

2. Commercial AM/FM Radio

23. In our NPRM, we discussed a proposal to assess regulatory fees for Commercial AM and FM radio licensees according to the size of a station's market, but concluded that development of a market-based fee assessment methodology for radio broadcast stations appeared to be not cost effective. See FCC 96-153 at ¶ 20.[10] As a result, we proposed to assess radio broadcast fees solely on the basis of class of license, utilizing the statutory fee structure that we

[10] In our FY 1995 NPRM, we recognized "that the population density of a station's geographic location was also a public interest factor warranting recognition in the fee schedule." FCC 95-14 at ¶ 29. Subsequently, we declined to adopt a market-based fee structure for AM and FM radio because we were unable to develop a reliable and accurate method for differentiating among radio markets. See FY 1995 Report and Order, 10 FCC Rcd at 13531-532.

adopted for FY 1994 and FY 1995. 47 U.S.C. § 159(g). In our NPRM, we invited comments proposing alternatives to the current radio fee structure. Id. at ¶ 21.

24. The Montana Broadcasters Association (Montana) filed comments proposing a radio broadcast service fee structure based on class of station and on market size. Montana maintains that its proposed fee structure is similar to the fee structure that Congress enacted for television broadcast stations and that it would more fairly allocate regulatory fees among radio stations by reducing the fees for small market radio stations and increasing them for larger stations. See 47 U.S.C. § 159(g)

25. Montana's proposed fee structure takes into account both a station's market size and the classification of its facilities. The proposed fee structure establishes broad groupings of radio broadcast markets determined by market size. It assigns a different level of fees for each market grouping predicated on the ratios between fees that Congress initially assessed for licensees in different sized television markets. Montana proposes four specific market classifications: Markets 1 through 25, Markets 26 through 50, Markets 51 through 100, and Remaining Markets. Stations are assigned to a market grouping based upon Arbitron Rating Co. (Arbitron) market designations. Montana proposes ratios between fees paid by larger market radio broadcast stations and fees paid by remaining market radio broadcast stations as follows:

Markets 1 through 25	1 to 3.4[11]
Markets 26 through 50	1 to 2.4
Markets 51 through 100	1 to 1.6

26. Montana assigns different classes of stations to each market by relying on an analysis of the broadcast markets conducted by Dataworld MediaXpert Service. According to Montana, its proposed rate structure would result in aggregate revenue to the Commission approximating the amount to be recovered from AM and FM licensees through the fee structure proposed in our NPRM. Although the Montana proposal would raise the fees for radio stations in the top 100 markets, no comments were filed by parties who would be adversely affected by the proposal.

27. Montana proposes to utilize the Dataworld data base which in turn is based on Arbitron market rankings. In our FY 1995 Report and Order, we found that a proposal to base fees on Arbitron data did not provide a sufficiently accurate and equitable methodology for determining fees. 10 FCC Rcd at 531-532. Moreover, because Congress recently mandated that we amend the regulatory fee schedule for television stations, we believe that further evaluation of the proposal is necessary in order to determine the proper ratio between fees for radio stations in different markets and to evaluate the impact of this change. See H.R. 3019, H. Rept. 104-537.

28. As a result, for FY 1996, we have decided to adopt the basic fee structure proposed in our NPRM, which differentiates between licensees based on the class of a station's license. The fees therein are low enough so that they should not be an onerous burden on most licensees, and our policy is to grant waivers of the fees where our licensees can make a showing of a compelling case of financial hardship.

[11] See Montana's petition, n. 4 at p 4. The ratios that Montana employs are those that Congress established in its fee structure for television broadcast regulatory fees. See 47 U.S.C. § 159(g). The Montana proposal would raise the fees for stations in larger markets and reduce the fees in smaller markets. For example the NPRM proposed a regulatory fee for Class A AM stations of $1,125. Utilizing the proposed Montana Schedule, Class A stations in remaining markets would have their fees reduced to $850; while Class A stations in Markets 1 through 25 would pay $2,890; in Markets 26 through 50 they would pay $2,040 and in Markets 51 - 100 they would pay $1,360. We note that Congress recently directed the Commission to modify the regulatory fee schedule to increase the differential between the fees paid by major market television stations and fees paid by television stations located outside of the top 50 markets. Utilizing new ratios between fees paid by television in larger and smaller markets based on the relationship between the fees Congress has established would further increase the differential between payments by radio stations in larger and smaller markets.

29. We agree, however, that there may be inequities in requiring all radio stations of the same class to pay the same fee without regard to the size of their market, particularly since stations serving greater populations generally have greater revenues than stations serving smaller markets. Thus, we believe that the Montana proposal warrants further study and consideration. It is our intention to consider the Montana proposal, or some modification thereof, for assessment of the FY 1997 fees. We will be commencing, subsequent to this proceeding, a Notice of Inquiry in order to develop a more appropriate methodology for assessing AM and FM fees. We invite interested parties to comment on Montana's proposal and to submit alternative AM and FM fee methodologies for our consideration in the context of that proceeding.

3. Commercial VHF/UHF Television Stations

30. Subsequent to the release of the FY 1996 NPRM, Congress required that we revise Section 1.1153 of the rules in order to increase the fees for VHF and UHF Television Stations located in the top 50 markets and to reduce the fees for stations in the 51 to 100 largest markets and in the remaining markets category. Pub. L. No. 104-134. Therefore, as required by Congress, we will amend Section 1.1153 of our rules to include the specific fees that Congress determined should be assessed licensees in the Television Broadcast Service for FY 1996. See Appendix D for a listing of the FY 1996 Television Broadcast fees.

31. In our NPRM we proposed to rely on Nielsen DMA rankings to determine the appropriate regulatory fee for television licensees in FY 1996 because Arbitron has ceased publication of its Areas of Dominant Influence that we formerly relied upon. See NPRM at para. 27. Southern Broadcast Corporation of Sarasota (Southern), licensee of Station WWSB(TV), Sarasota, Florida, opposes reliance on Nielsen DMA's because, as calculated by the DMA, its market rank would change to the 15th largest DMA market from the 153rd ADI market. As a result, Southern will be subject to a substantially higher fee than it has previously been assessed.

32. We have decided to rely on Nielsen's DMA market rankings, as proposed. As noted above, current Arbitron data for assessing television regulatory fees is no longer available. Nielsen data is generally accepted throughout the industry and will be updated and published annually by Warren Publishing in its Television and Cable Factbook. While the change may result in some licensees being assigned to new markets, this is not a basis for rejecting Nielsen markets. Nielsen markets may, in fact, provide a more accurate reflection of an applicant's service area than do Arbitron markets. We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.

4. Auxiliary Broadcast Stations

33. This fee category includes licensees of Remote Pickup Stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. These stations are generally associated with a particular television or radio broadcast station or cable television system.

34. In an attempt to simplify the Fee Schedule, our NPRM considered the feasibility and equity of combining Auxiliary Broadcast Station fees with the primary fees paid by broadcast station licensees and cable television operators into a single, consolidated fee. Although a consolidated fee has certain advantages, there are significant problems with using this approach and we found that such a fee would likely result in serious inequities since larger commercial broadcast stations and cable systems in the most profitable markets are more likely to utilize multiple auxiliary stations. While a consolidated fee would have little impact on stations serving larger populations, it could result in less profitable stations in smaller markets subsidizing regulatory fees for stations serving larger markets. Thus, our NPRM proposed to retain Auxiliary Broadcast Station fees as a separate category in FY 1996.

35. The Society of Broadcast Engineers (SBE) urges reduction or elimination of the Auxiliary Broadcast Station fee. It contends that frequency coordination and regulation of these facilities are in large part conducted by volunteers and supported by voluntary contributions from the industry. In SBE's view, imposition of a regulatory fee on broadcast auxiliary stations could "possibly place the entire program of SBE-affiliated frequency committees in jeopardy."

36. We have decided to not reduce or eliminate the Auxiliary Broadcast Station fee. We cannot conclude that our proposed regulatory fee would adversely impact voluntary coordination of auxiliary stations. Moreover, the relatively small fee for Auxiliary Broadcast Stations already takes into account volunteer efforts, including those described by SBE. Accordingly, we will retain a separate Auxiliary Broadcast Station fee as proposed in the NPRM. See Appendix F, Paragraph 27.

5. Intelsat & Inmarsat Signatory

37. In our NPRM, we proposed to establish a Signatory fee category to recover our costs of regulating the U.S. Signatories to the International Telecommunications Satellite Organization (Intelsat) and to the International Mobile Satellite Organization (Inmarsat). See FY 1996 NPRM at para. 43. We stated that the new fee was warranted due to the unique role of the U.S. Signatories in Intelsat's and Inmarsat's structure and our regulatory role with respect to these entities. The U.S. Signatory to Intelsat is the Communications Satellite Corporation (Comsat), the entity designated, pursuant to the Communications Satellite Act, as the sole operating entity to participate in Intelsat in order to construct and operate the space segment of the global

commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by the Governments on August 20, 1964. See 47 U.S.C. § 731. Also, pursuant to the Communications Satellite Act, Comsat is solely designated to participate in the Inmarsat. See 47 U.S.C. § 751. Because Comsat is the entity that Congress designated as the U.S. Signatory to both Intelsat and Inmarsat, the fee would apply only to Comsat.

38. Comsat has opposed our adoption of the Signatory Fee, contending that the proposed fee is unlawful and, even if lawful, excessive. GE American Communication, Inc. (GE Americom) has filed comments supporting our adoption of the Signatory fee and reply comments responding to certain of Comsat's arguments.

39. Comsat believes that the Signatory fee is beyond our authority in light of Congress' intention not to assess a fee upon space stations operated by international organizations. See FY 1995 Report and Order at para. 110. In addition, Comsat argues that we are authorized to establish new fee categories only in those instances in which there has been a change in our regulation or in the law. Comsat also claims that the Signatory fee is prohibited by Article I, Section 8, Clause 1 of the United States Constitution as an unauthorized and unconstitutional tax because it bears no relationship to any specific regulatory benefit that Comsat receives from the Commission. Instead, Comsat argues, Congress alone conferred upon Comsat its "special benefit" of Signatory status Finally, Comsat maintains that, even assuming that we have authority to establish a Signatory fee, the total amount to be recovered by the fee is grossly excessive.

40. We reject Comsat's contention that the Signatory fee contravenes Congressional intent reflected in Section 9. In the Conference Report accompanying Section 9, Congress stated with respect to space station fees that

> the Committee intends that fees in this category be assessed on operations of U.S. facilities, consistent with U.S. jurisdiction. Therefore, these fees will only apply to space stations directly licensed by the Commission under Title III of the Communications Act Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act, 22 U.S.C. Section 288 et seq.[12]

In contrast to the space stations referred to in the Conference Report, however, the Signatory fee will not be imposed on Intelsat and Inmarsat, or on their operation of international space stations. The fee applies only to Comsat, a private, for-profit, U.S. corporation that receives benefits from

[12] See H.R. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993); see also H.R. Rep. No. 102-207, 102d Cong., 1st Sess. 26. Both Intelsat and Inmarsat are subject to the International Organizations Immunities Act. See Exec. Order No. 11,996, 42 Fed. Reg. 4331 (1977); Exec. Order No. 12,238, 45 Fed. Reg. 60,877 (1980).

its special role in international satellite communications. Moreover, in contrast to Congress' rejection of a fee on Intelsat's and Inmarsat's space stations as inconsistent with U.S. jurisdiction, nothing in Section 9 limits our authority to recover our costs of regulating Comsat, a U.S. Corporation.

41. Comsat is also mistaken that the second sentence in subsection 9(b)(3) limits our authority to establish new fee categories. Specifically, subsection 9(b)(3) states that "the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law." 47 U.S.C. § 159(b)(3). The subsection provides that we must add new fees to the Schedule to reflect changes in the nature of our services. The statement does not purport to limit our statutory authority, and duty, to otherwise modify fees as provided in Section 9.

42. In that regard, subsection 9(b)(3) requires that we "amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A)." Paragraph (1)(A), in turn, requires that we assess and collect regulatory fees to cover the costs of regulatory activities, including international activities, by "tak[ing] into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities and other factors that the Commission determines are necessary in the public interest." 47 U.S.C. § 159(b)(1)(A). Thus, Section 9 both authorizes and requires amendment of the Schedule when, as here, we determine that such action is necessary to recover our regulatory costs for international activities, taking into account the benefits that we provide the payor and other public interest factors.

43. Further, we find no merit in Comsat's argument that our proposed Signatory fee constitutes an unauthorized and unconstitutional tax. Relying on National Cable Television Association v. United States, (NCTA), Comsat claims that the fee is an unconstitutional tax, rather than a fee, because it bears no relationship to any regulatory benefit conferred by the Commission on Comsat as a signatory. Comsat also asserts that Congress may not delegate the power to levy a tax. Comsat, however, misstates the law concerning delegations of taxing authority. In Skinner v. Mid-America Pipe Line Co., the Supreme Court made clear that, even if agency fees are a form of taxation, the delegation of discretionary authority under Congress' taxing power is subject to no constitutional scrutiny greater than applied to other nondelegation challenges. 490 U.S. 212, 224; 109 S.Ct. 1762, 1733 (1989). Thus, so long as the fees in question are within the scope of Congress' lawful delegation of authority in Section 9, they are constitutional. No requirement exists to establish that all of the administrative costs recovered through the signatory fee are not a tax in that they "inure directly to the benefit of regulated parties," rather than to the public generally. Id. at 223-24.

44. Consistent with the Supreme Court's guidance in Skinner, Congress in Section 9 of the Act declared that the fees are to be assessed in a rulemaking proceeding, based upon our

costs of performing enforcement, policy and rulemaking, international and user information activities, "taking into account" the benefits provided to the payor of the fee by these activities, as well as other public interest factors, and that we are to recover our costs only in the aggregate amount annually appropriated by Congress.

45. We believe that the fee in question fully satisfies the statutory requirements in Section 9. As noted in the NPRM, our review of our Signatory activities disclosed that approximately 14.7% of the costs attributable to space station regulatory oversight ($3,175,850)[13], as determined in Appendix C, is directly related to Intelsat and Inmarsat Signatory activities (5.25 FTEs[14] out of a total of 35.7 direct FTEs). As a result, $466,850 (rounded) must be collected from the Signatories to offset the regulatory costs attributed to them ($3,175,850 X 14.7%). Dividing this revenue requirement by two (there are Signatories to two separate organizations), yields a Signatory fee of $233,425. See Appendix F, Paragraph 37. We also have no doubt that Comsat benefits significantly from its status as signatory and the regulatory oversight that is necessitated by that status.[15] Therefore, taking into account these benefits, we perceive no public interest basis for relieving Comsat of the costs that the Commission incurs in regulating its activities.

46. Since the Signatory fee will recover our costs attributable to our Signatory oversight, we are able to reduce the space station fee. The new space station fee is computed by reducing the revenue requirement for space stations calculated in Appendix C ($3,175,850) by the $466,850 to be collected from signatories and dividing the reduced space station revenue requirement ($2,709,000) by the number of payment units (38 operational space stations). The result of these calculations is a new fee of $71,300 (rounded) for each operational space station.[16]

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[13] Revenue requirements have been adjusted throughout the satellite fee categories as a result of adjustments to the assessable payment units for some fee categories and the Congressionally imposed fees for VHF and UHF television stations. Therefore, the amounts will not match the amounts shown in the NPRM.

[14] Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (i.e., not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year.

[15] For example, we are currently conducting several proceedings concerning Comsat's authority to provide services via Intelsat and Inmarsat, its authority to participate in the procurement or leasing of various Intelsat and Inmarsat space stations, and its authority to participate in certain Intelsat and Inmarsat-associated businesses. There also are proceedings pending before us related to whether Comsat has conformed to applicable structural and financial separation rules. In addition, we actively participate on an ongoing basis with the Executive Branch in the oversight of Comsat's representations of U.S. policy at the Intelsat and Inmarsat governing boards through the U.S. Government instructional process.

[16] This fee is further adjusted in Paragraph 47.

47. Finally, although we have imposed a Signatory fee in our FY 1996 Schedule of Regulatory Fees, we intend in FY 1997 to explore alternative means of recovering these costs. We may, for example, conclude that it is more efficient to recover these regulatory costs through increases in the fees for international bearer circuits. However, before making such changes, we will seek public comment in the rulemaking proceeding to implement the FY 1997 Schedule of Regulatory Fees.

6. Low Earth Orbit (LEO) Satellite Systems

48. In our NPRM, we proposed for the first time to adopt a fee for Low Earth Orbit (LEO) Satellite Systems.[17] In developing that fee, we proposed to apportion the total revenue requirement for all space stations between LEO systems and geosynchronous space station licensees. In so doing, we also proposed to preserve the same relative relationship between the fees established by the Congress in Section 9(g) of the Act for geosynchronous space stations and LEO systems; i.e., an approximate 38.5% differential between the fee for LEO systems and the fee for geosynchronous space stations. 47 U.S.C § 159(g). After reducing the space station revenue requirement by the amount of the Signatory fees, the resultant LEO fee is $97,725 (rounded) and the new geosynchronous fee is $70,575 (rounded).[18]

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[17] Congress' Schedule of Regulatory Fees contains a fee for LEO systems. However, for FY 1994 and FY 1995, we determined that no LEO systems were operational on the effective date of the fee requirement for these years. See FY 1995 Report and Order at para. 15.

[18] The FY 1996 adjusted revenue requirement for all space stations has been determined to be $2,709,000. See Paragraph 46. For FY 1996, there is only one LEO system, and there are 37 geosynchronous (including DBS) space stations subject to fee payment. The formula for computing the new LEO and geosynchronous space station fees is as follows:

(a) We have assigned "L" to represent the LEO system fee and "G" to represent the geosynchronous space station fee.

(b) The relationship between the LEO fee and the geosynchronous fee may be expressed as:

L = 1.385G (i.e., the LEO fee needs to be 38.5% higher than the corresponding geosynchronous space station fee).

(c) The total revenue to be collected from LEOs and geosynchronous space stations may be expressed as:

L + 37G = $2,709,000 (i.e., the one existing LEO system and 37 geosynchronous space stations together must account for $2,709,000 in revenues).

(d) Substituting the value of "L" in (b) above into the formula in (c) above yields the following:

49. Motorola requests that we defer imposing any regulatory fee on a LEO system until an entire planned constellation has been launched and is fully operational. In our FY 1994 Report and Order, we decided that a LEO system would become subject to a fee payment when its first satellite became operational upon certification by its licensee that the operations of the first satellite in its system conforms to the terms and conditions of its authorization pursuant to 47 C.F.R. § 25.120(d). Nothing in Motorola's comments persuades us otherwise. It may take several years for an entire constellation to be completed. However, a system is capable of providing commercial customer services prior to full deployment of all authorized satellites. Thus, because our regulatory oversight of a LEO system begins when its initial satellite is launched and placed in operation, we will require that a LEO system licensee submit a fee once it certifies to the operation of its initial satellite pursuant to Section 25.120(d) of our rules.

7. Minimum Fee Payment Liability

50. As proposed in our NPRM at para. 57, we will adopt a minimum fee payment policy in order to minimize the cost of our regulatory fee program because our collection and verification costs for small payments are considerably more than our revenues from these collections. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10. We have reconsidered our proposal to submit the Form FCC 159 and have determined that we will not require those entities qualifying for the minimum fee liability exemption to file Form FCC 159. Those qualifying for exemption, however, are advised that as part of our verification program, it may be necessary for them to provide proof of exemption should we choose to audit their fee liability.

F. Additional Regulatory Fee Issues

1.385G + 37G = $2,709,000
38.385G = $2,709,000
G = $70,574

(e) Therefore, "G" (Geosynchronous space station fee) is $70,575 (rounded).

(f) Substituting the computed value of "G" in (d) above into the formula in (c) above yields the following:

L + 37(70,575) = 2,709,000

L + 2,611,275 = 2,709,000

L = 97,725

(g) Therefore, "L" (LEO fee) is $97,725.

1. Cable Television Systems

51. The National Cable Television Association (NCTA) has filed comments objecting to our proposed fee for cable television systems. NCTA asserts that we failed to discuss in our NPRM the basis for our proposed fee and that we did not demonstrate that the fee is reasonably related to our costs of regulating cable television. NCTA also believes that with deregulation, the fee for cable television should decrease rather than increase, particularly in light of our "social contract" resolution of rate complaints, ongoing deregulation of small cable systems and its expectation of further rate deregulation. Further, NCTA contends that the cable television per subscriber fee should not be set as high relative to the proposed fee for Wireless Cable (MMDS) licensees.

52. In our NPRM, we discussed in detail our methodology for developing our proposed fees for FY 1996, including our cable television fees. See NPRM at Paras. 8-12 and Appendix C. Therein, we set forth both our steps used to develop the fees and our mathematical calculations underlying the development of specific fee proposals. We also explained that, for various reasons, our cost accounting system was not yet able to provide reliable information to assist us in developing our fees. See NPRM at paras. 13-17. Thus, for FY 1996, we were unable to compare the individual fee category revenues with actual data accumulated from our new cost accounting system.

53. Even though we were not able to use our new cost accounting system, we believe the fees for cable systems are reasonably related to our costs attributable to cable television regulation which consist of several different categories of costs. Direct staff costs are those costs attributable to staff assigned to the Cable Services Bureau engaged in activities described in Section 9(a)(1) of the Act. Indirect or overhead support staff costs are those costs attributable to staff assigned to other Bureaus and Offices within the Commission who support direct staff working in the Cable Services Bureau. Support staff accounts for approximately 40% of staff costs attributable to cable television oversight. Other obligations costs are non-personnel costs such as office space rental, equipment, contractual services, supplies, etc. which are attributable to the Cable Services Bureau. In total, these costs have not changed significantly from FY 1995.

54. Additionally, we must recover from our regulatory fees other costs that cannot be specifically attributed to a particular class of licensee. These costs, in the interest of fairness, are allocated on a pro-rata basis to all fee payors. For example, Congress has exempted several classes of licensees from regulatory fees, including amateur radio licensees, non-commercial radio and television stations, non-profit entities and public safety licensees. Although these entities are exempt from payment of a fee, Congress requires that our regulatory costs associated with these entities be borne by those regulatees not exempt from the fee requirement. Additionally, in making the mandatory adjustments to the fee amounts required by Section 9(b)(2)(a), an overall revenue shortfall occurs due to changes in the number of payment units from FY 1995 to FY

1996. This shortfall (over $1 million) is allocated on a pro rata basis to all fee categories, including cable television system operators.

55. Also, we disagree with NCTA's contention that our regulatory costs related to cable television systems should be lower at this stage of the industry's deregulation. Based on the foregoing, our costs attributable to the regulatory categories for which we are required to recover our costs through regulatory fees are actually much higher than they may appear due to overhead and indirect costs. Second, although we are deregulating the cable television industry, our regulatory costs related to cable television have not diminished for FY 1996. Since the Telecommunications Act of 1996 became law, we have commenced several important rulemaking proceedings to further our cable deregulatory policies, requiring significant personnel resources. In addition, because of the large volume of work required of the Commission under the 1996 Act, the Cable Bureau has taken on significant new responsibilities in a number of areas related to the provision of video programming services. For example, the Bureau is responsible for developing and enforcing rules concerning open video systems pursuant to new section 653 of the Communications Act, over-the-air reception devices under section 207 of the 1996 Act and telecommunications navigation devices under new section 629. And the Bureau has been assigned the responsibility to implement the amendments to section 224 (Regulation of Pole Attachments) of the Communications Act of 1934, as well as new section 713 of the Communications Act concerning video programming accessibility. These proceedings (whose costs must be offset by regulatory fees) are in addition to our on-going oversight responsibilities involving rate complaints, program access complaints, informational services, and adjudicatory proceedings work, which must continue even as we implement the Telecommunications Act. Thus, while we agree with NCTA that our "social contracts" with cable operators and the deregulation of small cable operators and similar policy initiatives reduce certain costs of regulation, we cannot conclude that our overall costs of cable regulation or those additional regulatory costs that we must recover from cable operators justify a reduction in the cable television fee for FY 1996.

56. Finally, we reject NCTA's complaint that the cable subscriber fee is too high relative to the regulatory fees paid by Wireless Cable (MMDS) licensees. NCTA estimates that MMDS fees would be $.20 per subscriber if its fee were assessed on a per subscriber basis rather than a call sign basis. As NCTA is aware, cable and MMDS are subject to substantially different regulatory oversight programs. As a consequence of our oversight of these services, our estimated total cost to regulate the cable television industry in FY 1996 is $31 million as opposed to an estimated total cost to regulate MMDS entities in FY 1996 of $158,000. In view of these estimated costs, in large part due to their different regulatory regimes, we see no unreasonable disparity between the revenue requirement that we have assigned to the two services. NCTA should note that MMDS regulatory fees have increased nearly twice as much as cable television fees since Congress established its Schedule of Regulatory Fees in 1993. See 47 U.S.C. 159(g).

57. In summary, we expect that our deregulatory activities will result in reduced oversight costs in future years, but those costs have not and will not diminish for FY 1996. Thus, for FY 1996, we will adopt the cable television fee shown in Appendix D.

2. International Bearer Circuits

58. International Bearer Circuit fees are assessed upon facilities-based common carriers activating a circuit in any transmission facility for the provision of service to an end user or a resale carrier. In our NPRM, we proposed a fee of $ 4.00 per bearer circuit upon facilities-based common carriers activating a circuit in any transmission facility for the provision of service to an end user or a resale carrier.

59. Comsat contends that our proposed fee for international bearer circuits is approximately twice the appropriate fee amount necessary to recover the revenue requirement that we assigned to this fee category. Comsat states that the revenue requirement associated with bearer circuits has increased significantly in one year without any explanation. In Comsat's view, the increase in the revenue requirement for bearer circuits arises from underforecasting payment units in FY 1995 and the use of actual payment units as the basis for our FY 1996 forecast. Comsat states that, since there is no evidence that the costs which the bearer circuit fee is designed to recover have increased, our proposed retention of the $4.00 per circuit fee, based on our underestimate of bearer circuit payment units for FY 1995, is unjustified.

60. The Commission, in its FY 1995 NPRM, estimated that there were 62,000 international bearer circuits susceptible to regulatory fee payment (based on estimated counts as of December 1994). As a result of comments received from interested parties in that rulemaking, we more than doubled (to 125,000) the number of estimated circuits applicable to our development of FY 1995 regulatory fees in our FY 1995 Report and Order. Based on actual numbers of bearer circuits for which fee payments were made in FY 1995, we proposed in our FY 1996 NPRM a total of 128,000 circuits for FY 1996 (based on estimated counts as of December 31, 1995).

61. The Commission knows of no reliable source of bearer circuit counts. We do not maintain this data at the Commission nor do we know of any central repository of this information. As such, we must rely on industry estimates or actual prior year payment information in order to determine the number of payment units for any particular fiscal year. The payment unit estimate for FY 1995 was based on the best information available to us and relied upon information provided by regulatees. The same is true for FY 1996. Although Comsat questions our estimate of payment units for FY 1996, it did not provide its own estimate of circuits, nor did any other commentor. As such, we believe our FY 1996 payment unit estimate based on actual circuits paid for in FY 1995 is appropriate.

62. Comsat's concerns relative to the total revenues being collected from bearer circuits are not persuasive. The methodology for calculating regulatory fees established by the Congress requires that prior year fee amounts be proportionally adjusted in order to ensure that the total amount to be collected is apportioned fairly among our regulatees. The Congress also provided that further adjustments to the fees ("permitted amendments") should be supported by costs derived from our cost accounting system. As noted elsewhere in this item, we were unable to utilize cost data from our new cost accounting system this year and were therefore unable to determine the total costs attributable to bearer circuit regulation and to compare this to our estimate of revenue requirements. This data should be available for development of our FY 1997 regulatory fees. In the absence of reliable cost accounting information, we performed an informal review of bearer circuit costs and found that our costs may significantly exceed the revenue requirement for bearer circuits established in this rulemaking. Estimated staff resources devoted to bearer circuit oversight also seem to support a higher revenue requirement. As such, we believe that our revenue requirement and estimated payment units are based on the most accurate information available, and we will utilize these estimates for FY 1996.

63. In addition, Comsat states that our estimated unit count for bearer circuits may also be low because we failed to consider that we recently authorized domestic satellites to provide international bearer circuits. See FCC 96-14 (released Jan. 22, 1996), summary published 61 FR. 9946 (Mar 12, 1996), 11 FCC Rcd 2429, (DISCO-I Order). Also, Comsat contends that our definition of bearer circuits should include all bearer circuits, not only those provided by common carriers, because the statutory fee schedule contemplates that the bearer circuit fee will be collected from common and private carriers alike.

64. Nothing in Section 9 of our implementing rules limits payment of international bearer circuit fees to international common carriers. Therefore, any common carrier, including domestic satellite licensees providing international bearer circuits, as described in our FY 1995 Report and Order at paras. 115 through 117, is subject to the bearer circuit fee. However, because our DISCO-I Order did not become effective until after the calculation date for bearer circuits (October 1, 1995), domestic satellite licensees were not authorized to provide international bearer circuits at the time for calculating the bearer circuit regulatory fee, and, therefore, we have not included bearer circuits provided by domestic satellite carriers in our estimates of bearer circuit payment units for FY 1996.

65. Finally, Comsat contends that Section 9 provides for the payment of a bearer circuit fee by private carriers. However, our NPRM, as well as prior year NPRMs, did not propose to collect international bearer circuit fees from other than common carriers. We do not have any information in the record of this proceeding on which to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier international facilities. As a result, we have no other viable alternative but to adopt the fee as proposed in the NPRM. However, we believe that Comsat's proposal warrants further consideration. It is our intention

to consider Comsat's proposal, or some modification thereof, for assessment of the FY 1997 fees.

3. National Exchange Carrier Association (NECA)

66. NECA has requested by comments in this proceeding that we amend our rules governing confidentiality of information NECA receives in its role as administrator of the Telecommunications Relay Service (TRS) Fund to permit it to use TRS data for the sole additional purpose of aggregating regulatory fees from local exchange carriers (LECs) in accordance with our requirements for assessment of their fees.[19] See 47 C.F.R. § 64.604(c)(4)(iii)(I). There were no other comments filed addressing NECA's proposal.

67. Currently, our rules prohibit NECA from using the TRS data it collects for any purpose other than administration of the TRS fund. See 47 C.F.R. § 64.604(c)(4)(iii)(I). Because our assessment of regulatory fees from LECs and other common carriers is modeled in large part upon the methodology that we adopted for contributions by these carriers to the TRS fund, we believe that a specific limited modification of the rule governing NECA's use of TRS information would increase NECA's efficiency in determining the appropriate regulatory fee due from any carrier that avails itself of NECA's services in paying its regulatory fee. Thus, we will amend our rules to permit NECA to use TRS information for determining a carrier's fee. Section 64.604(c)(4)(iii)(i) will be amended to state that NECA may also use TRS information "to calculate the regulatory fees of interstate common carriers and to aggregate their fee payments for submission to the Commission."

4. Mobile Satellite Service (MSS)

68. Motorola Satellite Communications, Inc's. ("Motorola") has requested clarification that hand-held transmit and transmit/receive units used in the mobile satellite service (MSS) are within the category of MSS "blanket" earth station licenses subject to a single fee for all authorized units on one license. We have incorporated language in Appendix F that MSS "blanket" earth station licenses include hand-held transmit and transmit/receive units as well as vehicle-based transceivers and are, therefore, subject to a fee payment.

G. Procedures for Payment of Regulatory Fees

69. Section 9(f) requires that we permit "payment by installments in the case of fees in

[19] NECA is a not-for-profit, membership association, consisting of all local exchange carriers in the United States, Puerto Rico, the U.S. Virgin Islands and Micronesia. NECA is responsible, under Subpart G of our Rules, for preparation of access charge tariffs on behalf of all local telephone companies that do not file separate tariffs, collection and distribution of access charge revenues, administration of the Universal Service and Lifeline Assistance programs, and the administration of the TRS fund. See 47 C.F.R. § 69.603 and § 64.604.

large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor." See 47 U.S.C. § 159(f)(1). Consistent with the section, we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee. In general, we are retaining the procedures that we have established for the payment of regulatory fees.

1. Annual Payments of Standard Fees

70. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category.

71. The payment due date for standard fees will be announced by Public Notice in the Federal Register following Congressional notification. For licensees, permittees and holders of various authorizations in the Common Carrier, Mass Media, International, and Cable Television Services whose fees are not based on a subscriber, unit, or circuit count, liability for fee payment is established for any authorization held as of October 1, 1995, the first day of FY 1996. However, the licensee, permittee, or other regulatee at the time a fee payment is due is the individual or entity legally liable for the fee payment.

72. In the case of regulatees whose fees are based upon a subscriber, unit, or circuit count, the number of a regulatee's subscribers or circuits on December 31, 1995, will be used to calculate the fee payment.[20] As noted in the preceding paragraph, the licensee, permittee, or other regulatee at the time a fee payment is due is legally liable for the fee payment.

2. Installment Payments for Large Fees

73. There will be insufficient time following the effective date of our FY 1996 Schedule of Regulatory Fees to permit implementation of an installment payment program for large fees. All entities who would otherwise have been eligible for installments, i.e., whose fee liability exceeds our previously established level of $12,000, must submit their fee payments on the date

[20] Cable systems have been calculating their regulatory fees using subscriber data submitted to the Commission in their Annual Report of Cable Television Systems (Form FCC 325). Consistent with this methodology, we ask that cable system operators compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Accordingly, the number of cable subscribers will not necessarily be based on a count as of December 31, 1995, but rather on "a typical day in the last full week" of December 1995.